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Online Dispute Resolution: Communication Challenges and Opportunities

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ABSTRACT

Online Dispute Resolution (ODR) is increasingly recognized as a transformative method for resolving conflicts outside traditional legal systems, leveraging technology to offer more accessible, efficient, and inclusive alternatives. However, communication in ODR poses unique challenges and opportunities that significantly affect the effectiveness of the dispute resolution process. This paper examines the theoretical foundations of communication within ODR, identifying key communication theories such as social presence theory, media richness theory, and interaction adaptation theory. It discusses the primary communication barriers in ODR, including the absence of nonverbal cues and misunderstandings due to technological constraints, and highlights the potential benefits, such as inclusivity, privacy, and accessibility. Additionally, it explores how technology can enhance communication and address the challenges faced by disputants and practitioners alike. By analyzing both the limitations and advantages of ODR communication, the paper offers insights into how these technologies can be improved to facilitate more effective conflict resolution.

Keywords: Online Dispute Resolution, Communication Theories, Social Presence, Media Richness, Interaction Adaptation Theory, Technology in Dispute Resolution.

INTRODUCTION

Online Dispute Resolution (ODR) has become a burgeoning field over the last two decades, focusing on using the tools and possibilities offered by technology to assist people in conflict to resolve it or to assist third-party decision-makers to resolve it for them when they are unable. The primary means of the justice and legal system in both enabling and restricting access to justice lies in the quality and effectiveness of their communication strategies. If people do not understand their rights, or cannot communicate their needs, they are unlikely to engage effectively with formal, institutional means of dispute resolution. Setting does not necessarily take full account of the extent of online communication between disputants and between a disputant and their third-party decision maker. Any technology seeking to provide ADR with a virtual element therefore needs to recognize the importance of effective communication and the challenges that it may present. It holds out the promise of being able to offer justice, in the middle ground between the formal, institutional courts and the homes, workplaces, and neighborhoods where so much of this cyber conflict goes on. In the scope of this paper, we focus on how ODR can offer the potential to transform the way we think about offering justice to people in conflict. We must understand the dynamics of communication in cyberspace if we are to be able to shape its beneficial effects, however [1, 2].

Theoretical Framework

The theoretical framework adopted in this report provides a foundation for examining communication issues in ODR. To construct this framework, we first cast a glance at communication theory and then link these theoretical underpinnings to the established practices and related literature on ODR. Since multiple theories could be used to contribute to an understanding of how communication is conducted in the

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practices of ODR, we choose those that are focused on the interplay between human communication and technology. This yields us an opportunity to examine these two subject areas as a combined practical field, considering ODR a relevant and up-to-date iteration. This approach allows us to critically engage with theories exploring rapid technological change and their application in practice. It similarly helps in assessing the potential success and implications of ODR on the future of dispute resolution. Thus, this theoretical section not only presents our academic contribution but also can be seen to offer a "reality check" on how we might understand and enhance communication in dispute resolution in an ODR context [3, 4]. Four communication theories emerge as part of our discussion in this paper. By focusing on actors within the ODR space and the activities they are undertaking in their practice, we make explicit how these communication theories work in tandem with ODR to help understand how communication takes place and could be further facilitated in ODR. Conceptually, for example, social constructivism lends insights into how practitioners might work on their identity and align identity to the practice of online dispute resolution in regulatory terms. In so doing, such an activity might increase the desire for a particular set of practitioners to adopt ODR methods given the "identity alignment" and new forms of "e-professionalism" that they might seek, in turn, adapting their communication and effectively assisting the goals of ODR as set by policymakers. Towards the end of the paper, we show how these theories can be regarded as offering analytical tools or "lenses" for examining, primarily, the capabilities and practices that dominate the field. That examination critically informs both policy and practice [5, 6].

Communication Theories in ODR

A variety of communication theories have been found useful for understanding and designing Online Dispute Resolution interventions. One such theory pertinent to ODR is the social presence theory. The social presence theory is rooted in social psychology, arguing that individuals evaluate and appreciate one another by assessing the extent of one another's social presence and expressiveness. Some scholars also apply media richness theory to ODR. Whereas social presence theory assesses media on affective dimensions, media richness theory derives different capabilities of different media, specifically considering the information needed for understanding tasks. Face-to-face communication is viewed as a medium providing immediate natural language and is adapted to complex linguistic content. Media richness theory maintains that a disconnect between media capability and communication complexity is at the heart of inappropriate medium selection [7, 8]. ODR stakeholders should understand that media communication theory recommends a match between the complexity of communication and media capability; not including a match results in potential misunderstandings. By this analysis, synchronous and predominantly asynchronistic text-based communication, as well as telephone and video conferencing in ODR, can potentially offer a role for ODR practitioners in improving and assessing ODR system effectiveness. One theory that may prove useful in addressing training deficits is the interaction adaptation theory. Interaction adaptation theory was developed as a response to a call for a more cognitive understanding of social interaction and communication via communication media. Rather than focusing on the social presence of users, this theory maintains that communication partners make and update judgments of one another's communicating influence and intent based on how the communication goes on thereafter. Overall, the most desirable theoretical lenses and concerns will often depend on balancing ought, could be, and like-to-know considerations [9, 10].

Communication Challenges in ODR

The first step in the online resolution process is the filing of a complaint or an explanation of the problem to be already identified and agreed participants to the ODR platform. The communication process is affected by various communication barriers such as misinterpretation, misunderstandings, faulty translations, feedback delays, critique of the process, and a lack of personal connection to participants and the process. There are cases in which personal antagonism emanating from frequent communications between the disputants hampers the negotiation process. It may also be very difficult to analyze the true meaning of the dispute in cases involving Indigenous literature created or continued using rhythm, chorus, speculation, ambiguity, and metaphor. The digital interactive environment generates unique problems involving distance, advanced technology systems, and a reliance on digital multimodal communication, which is marked by a lack of face-to-face encounters. Such a system that aids digital interactive communication involves forgetting, distorting, generalizing, and misinterpreting the messages and emotions of the receiver. Our lack of experience in digital interaction leads to a significant level of misunderstanding, leading to the emergence of startling new interpretations of conversational exchange. These communication situations violate the quality and process of interaction, with various consequences.

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These situations can keep an individual unaware of the intention of the negotiator and can stifle further communications, creating tension and frustration. These situations could create the potential for new dispute emergence [11, 12].

Lack of Nonverbal Cues

The absence of nonverbal cues is likely to be the most commonly recognized issue when it comes to communication challenges in an ODR setting. Facial expressions, tone of voice, and body language, for instance, play a substantial role in conveying emotional information when human beings interact and affect what is said, how it is said, and its reception by another party. Without these nonverbal cues in a digital environment, miscommunication can easily occur, as these nonverbal features serve as a medium for transmitting the emotions associated with communication. Emotion and intention are intrinsic to talk and important to the work of achieving mutual understanding and interpretation among disputants. Conflicts are not always straightforward or single-issue problems to solve, but frequently are littered with misunderstandings, confusion, and ambiguities [13, 14]. Default face-to-face behavior suggests that copious amounts of praise or affirmation may be necessary before a request is made. We often need to learn who makes an appropriate recipient of a request and how to make the request in a way that it can be communicated clearly and a correct or appropriate response generated. These issues are typically bound up with communicative and interactional pragmatics. The creation of rapport between party members in a dispute resolution process can be important in ultimately achieving an agreement, especially if an online conflict is already adversarial. Many ODR systems allow disputants to engage in multiple avenues of communication, and increased communication can lead to enhanced trust. Supplementing textual communication tools with video or teleconferencing to allow access to these extra verbal cues is one way to overcome the lack of nonverbal cues in a digital environment. Of course, this is not always possible, and many dispute resolution practitioners would dispute that this is always desirable. Alternatively, various ways to compensate for the absence of nonverbal cues via 'fine tuning' techniques in text-only communication can be explored. This can be done when dealing with addressing individual behavior, developing and repairing misunderstandings, and signaling humor and sociability. Such fine-tuning confidence-building techniques can compensate for the loss of some nonverbal cues, although the effectiveness of such techniques in all online dispute-resolution contexts is an empirical question. This results in emotional labor that is once removed from the rich and complex engagement of the bodily vignette, but is nonetheless central to the expression of emotional context through interaction design [15, 16].

Opportunities For Communication in ODR

ODR may provide opportunities to communicate in ways that are not appropriate or possible in traditional dispute resolution. Advantages of using technology and the ODR environment include: a) access, b) inclusivity, c) privacy, and d) communication function. First, technology can facilitate the inclusion and reach of the dialogue. Stakeholders can take part in a conversation that includes leaders and representatives located anywhere in the world. Inclusive discussions with direct stakeholders and uninterrupted interactions may be hard to ensure in some cases, but ODR environments that appropriately use technology can help policy and program officials access the evidence and implementation experiences underpinning international guidance and evidence for standards. Second, these tools can be used to liaise with interested people, ensuring that their opinions are heard even when they are unable to take part directly. This is a particularly good example of reaching out to the well-being sector and graduates with caring responsibilities [17, 18]. Several public sector participants identified potential in the use of ODR and highlighted advantages in the asynchronous communication it affords, such as the time to reflect on what you have said and avoid heated exchanges. This is consistent with some public, private, and third-sector evidence of ODR use, which has pointed to exposure and dialogue with new stakeholders. This can also help ODR processes be more transparent and less adversarial than traditional means, making the resolution of the issue more likely. Technical strategies were a concern for only a small minority regarding the lack of stakeholder attention and participation in ODR. One public participant suggested that making people comfortable online is likely to be a question of familiarity and publicizing the approach: "The key is for the public to be aware and feel confident in using the system." Some public and private experiences reported that, where successful, the ODR software has been developed in-house to match existing electronic systems and make householders feel familiar with the process. While appearance and branding did not concern the questionnaire participants, evidence suggests the benefits of making a program attractive for it to be used. Stating that "if you're talking about

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kids, it's just got to look more engaging. Just use a different front page." It may be that giving ODR a personal touch can solve some of the problems usually associated with dispute resolution [19, 20].

Use of Technology

One of the powerful tools of Online Dispute Resolution (ODR) is that ODR processes can easily incorporate technology to support communication. Disputing parties can communicate by video conferencing, exchange documents, and chat in real-time via a mediation or separate group chat room, and work collaboratively on documents stored in the cloud. A frequently utilized platform is Zoom. Zoom supports video conferencing – a key feature for remote communication or when the parties do not want to meet in person. In response to the pandemic, mediation services utilizing another platform for online hearings became common. Online communication and the use of technology can overcome geographical barriers and open the door to wider participation, engaging individuals who would otherwise be excluded [21, 22]. It is important to select platforms that suit the user group and their needs but also to adopt ODR platforms that can be easily integrated with multiple systems. For example, the online dispute resolution (ODR) platform works in this way. It collects bids from claimants and offers from insurers, then automatically settles disputes. The platform providers also offer mediation services, and any costs are included within their existing contracts. ODR platforms have evolved due to the rapidly evolving needs of online communities and advancements in technology. More recently, chat functions or chat rooms that support multiple conversations and provide mediators with the facility to meet with each party individually for caucuses have been introduced [23, 24].

CONCLUSION

Online Dispute Resolution (ODR) offers significant potential to transform conflict resolution by addressing access barriers and enabling more inclusive, flexible solutions. However, the communication challenges intrinsic to digital platforms—such as the absence of nonverbal cues and technological misinterpretations—can hinder the effectiveness of the process. Recognizing and addressing these challenges through enhanced communication strategies and the strategic use of technology can mitigate misunderstandings and foster a more effective resolution process. Incorporating communication theories into the design and practice of ODR systems provides valuable insights into improving these platforms, making them more user-friendly and effective for all stakeholders involved. As technology continues to evolve, ODR systems must adapt, ensuring that they provide a robust, clear, and empathetic communication environment that benefits disputants and practitioners alike.

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